

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JEROME CURRY, JR.,

Plaintiff,

vs.

ROSE M. BACON, BONNIE L.  
JOHNSON (a.k.a. CURRY),  
GAYLE P. ERVIN, HOLY FAMILY  
HOSPITAL, JOHN ROGERS, 911  
CALL CENTER, JEROME J.  
LEVEQUE, FELICE P.  
CONGALTON, SUE CURLY, and  
POLICE OFFICER DALMHER

Defendants.

NO. CV-09-299-JPH

**ORDER ADOPTING REPORT AND  
RECOMMENDATION, DISMISSING FIRST  
AMENDED COMPLAINT, DENYING  
UNTITLED MOTION, AND DENYING  
MOTION/REQUEST FOR LEGAL  
REPRESENTATION AND EXTENSION OF  
TIME**

**1915 (g)**

Magistrate Judge Hutton filed a Report and Recommendation on January 14, 2010, recommending Mr. Curry's First Amended Complaint be dismissed in part with prejudice and in part without prejudice (Ct. Rec. [17](#)). The court also recommended Plaintiff's untitled motion for relief regarding a state court matter be denied.

Rather than file Objections, Plaintiff has filed a "Motion/Request for Legal Representation and for Extension of Time to Amend." Plaintiff did not note his Motion for hearing (or present a supporting memorandum) as required by LR 7.1(h), Local Rules for the Eastern

1 District of Washington. Since this is the first time Plaintiff has  
2 failed to do so, the Court has noted Plaintiff's motion for him on the  
3 date signed below. **PLAINTIFF IS CAUTIONED THAT ANY FURTHER MOTIONS**  
4 **SUBMITTED TO THE COURT WITHOUT NOTING THEM FOR HEARING IN COMPLIANCE**  
5 **WITH THE LOCAL RULES WILL NOT BE ADDRESSED BY THE COURT.**

6 **APPOINTMENT OF COUNSEL/EXTENSION OF TIME**

7 Plaintiff requests the appointment of counsel to assist him in  
8 presenting his lawsuit. This court has discretion to designate counsel  
9 pursuant to 28 U.S.C. §1915(e)(1) only under exceptional circumstances.  
10 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining  
11 whether exceptional circumstances exist requires evaluating "the  
12 likelihood of success on the merits and plaintiff's ability to  
13 articulate his claims *pro se* in light of the complexity of the legal  
14 issues involved." *Id.* (citation omitted). The court already provided  
15 Plaintiff with relevant legal standards and directed Plaintiff how to  
16 present a legally sufficient complaint. He failed to do so. The record  
17 does not reflect exceptional circumstances that warrant the appointment  
18 of counsel to assist Plaintiff. Therefore, **IT IS ORDERED** Plaintiff's  
19 request for appointment of counsel (Ct. Rec. [20](#)) is **DENIED**.

20 Plaintiff also states he needs "a motion request for extension for  
21 30 days . . . or Feb. 22<sup>nd</sup> 2010 . . ." He asserts such an extension  
22 will "give [him] time to figure the correct procedures . . . [he has] no  
23 access to any law library in WSP camp . . . [he has] to move to get the  
24 right access to legal means . . . [he is] seeing justice work against  
25 [him] for being a non educated person . . . so can [he] request that the  
26 right to be heard on record . . ." Again, Plaintiff's assertions are

1 unclear.

2 Plaintiff already filed a First Amended Complaint which the  
3 Magistrate Judge found legally insufficient to state a claim upon which  
4 relief may be granted. To the extent Plaintiff is seeking an extension  
5 of time regarding state court matters, this court lacks jurisdiction to  
6 consider his requests. To the extent he is seeking more time to file an  
7 amended complaint, such a request is rendered moot by the submission of  
8 the First Amended Complaint. Accordingly, **IT IS ORDERED** the Motion for  
9 Extension of time (Ct. Rec. [20](#)) is **DENIED**.

10 Having considered Plaintiff's submissions and being fully advised  
11 in this matter, **IT IS ORDERED** the Report and Recommendation is **ADOPTED**  
12 **in its entirety** and Mr. Curry's First Amended Complaint is **DISMISSED in**  
13 **part without prejudice** to Plaintiff pursuing claims regarding alleged  
14 prosecutorial misconduct and ineffective assistance of counsel in an  
15 appropriate state court proceeding, and **DISMISSED in part with prejudice**  
16 for failure to state a claim upon which relief may be granted under  
17 under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). **IT IS FURTHER ORDERED**  
18 the untitled Motion (Ct. Rec. [15](#)) is **DENIED**.

19 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner  
20 who brings three or more civil actions or appeals which are dismissed as  
21 frivolous or for failure to state a claim will be precluded from  
22 bringing any other civil action or appeal in forma pauperis "unless the  
23 prisoner is under imminent danger of serious physical injury." 28  
24 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory**  
25 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's**  
26 **complaint may count as one of the three dismissals allowed by 28 U.S.C.**

1 § 1915(g) and may adversely affect his ability to file future claims.

2 **MOTION FOR COURT HEARING**

3 On February 2, 2010, the court received a document titled, "Motion  
4 for Court Hearing" (Ct. Rec. [21](#)), which Plaintiff failed to note for  
5 hearing. In light of the disposition of this case, **IT IS ORDERED**  
6 Plaintiff's Motion (Ct. Rec. [21](#)) is **DENIED as moot**. As previously  
7 advised, Plaintiff should pursue his claims regarding the composition of  
8 his jury in an appropriate state court action.

9 **IT IS SO ORDERED.** The District Court Executive is directed to  
10 enter this Order, forward a copy to Plaintiff at his last known address,  
11 enter judgment, and close the file. The District Court Executive is  
12 further directed to forward a copy of this Order to the Office of the  
13 Attorney General of Washington, Criminal Justice Division. The court  
14 certifies any appeal of this dismissal would not be taken in good faith.

15 **DATED** this 3rd day of February 2010.

16  
17 s/Edward F. Shea  
18 EDWARD F. SHEA  
19 United States District Judge  
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